

April 1, 2016

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Permitting and Environmental Review File No. **E0800728**
Supplement

**LEO MCMILIAN
SHERRY MCMILIAN
ASTRO AUTO WRECKING**
Code Enforcement Appeal

Location: 37307 Enchanted Parkway S, Federal Way

Appellant: Leo McMilian
represented by **Jean Jorgensen**
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Renton, WA 98057
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SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Deny in part, grant in part

EXAMINER PROCEEDINGS:

Hearing Opened:	March 22, 2016
Hearing Closed:	March 23, 2016

FINDINGS, CONCLUSIONS AND DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

Procedural history

1. The code enforcement saga of Leo McMilian and his business Astro Auto Wrecking is a long and complicated one involving two separate appeals on two adjacent parcels. Initially, on September 11, 2007, the Department of Development and Environmental Services (now Department of Permitting and Environmental Review (DPER)), issued a code enforcement Notice and Order to Appellants Leo and Sherry McMilian alleging code violations on Tax Lot 9038, an R-4 zoned property located in the 37300 block of Enchanted Parkway South east of the Federal Way city limits. The original Notice and Order cited the McMilians for operation of an auto wrecking business from a residentially zoned property, clearing and grading violations, and construction of fencing without required regulatory approvals.
2. The McMilians filed a timely appeal of this first Notice and Order. Appeal hearings were held by King County Hearing Examiner Peter Donahue in 2008. Mr. Donahue denied the McMilian appeal within a decision issued on May 26, 2009. This decision was appealed to King County Superior Court and thereafter to Division One of the Court of Appeals, which on May 2, 2011, issued its opinion in *McMilian v. King County*, 161 Wn App 581.
3. The Court of Appeals affirmed most of Hearing Examiner Donahue's decision, but remanded it for further findings on certain specific issues. Since Mr. Donahue was no longer in King County's employ, the remand case was assigned to the current *pro tem* Hearing Examiner for review based on the record previously established. The review on remand resulted in a Supplemental Report and Decision issued on June 28, 2012, ruling that a nonconforming use had not been established in 1958 on tax lot 9038. This second decision was also appealed by the McMilians and ultimately upheld by the Court of Appeals in an unpublished opinion issued November 3, 2014.
4. The second code enforcement proceeding, the tax lot 9005 appeal presently before us, concerned the southerly of the two adjacent lots owned by Mr. McMilian. The current appeal involves the status of nonconforming uses on the northern lot. It is undisputed that parcel 9005 was the original location of the auto wrecking yard in question, and the County has stipulated that in 1958 an auto wrecking yard was in fact established as a legal nonconforming use on this parcel. Unlike the earlier parcel 9038 appeal, the questions now raised do not involve the initial establishment of the nonconforming use but rather allegations by the County as to its subsequent illegal expansion. While the historical photographs show that in 1958 parcel 9005 still had both wooded and graded empty areas that were not yet being actively used for the wrecking yard, the County's unconditional stipulation as to the earlier nonconforming use on Parcel 9005 has the effect of authorizing the entire parcel for auto wrecking yard activities.
5. Although the initial Notice and Order affecting parcel 9005 was issued in 2008, the parties stipulated to this appeal's continuance pending resolution of the companion

enforcement case affecting parcel 9038. The specific citation document governing this appeal was issued on July 21, 2015, as a second supplemental Notice and Order. It alleged the illegal expansion of a nonconforming use, including expansion of the wrecking yard, the storage of junk vehicles and parts, and the employment of non-improved surfaces. It characterized certain elements of the alleged illegal expansion as follows: “Expansion of the use includes but is not limited to the addition of vehicle crusher and expansion of scope of operation.”

The second supplemental Notice and Order also added a second citation for construction of accessory structures without building permits, specifically a large outbuilding located directly behind the primary building and an addition to the primary building itself.

6. The series of Notices and Orders issued for parcel 9005 included the business itself, Astro Auto Wrecking, as a cited party. The Appellants, Mr. McMilian and Astro Auto Wrecking, through their attorney Jean Jorgensen jointly filed appeal statements in response to each of the three Notices and Orders issued. These appeal statements collectively allege that any changes made on the cited property since 1958 entailed the intensification of uses not requiring County permit approval, rather than illegal expansions as alleged by the Department. The appeals also argued that any development standards enacted by the County after 1958 cannot be employed to regulate legal nonconforming uses already existing on the parcel. The appeal statements also alleged defenses outside the jurisdiction of this administrative procedure to consider, such as retaliation, estoppel, and constitutional substantive due process and takings claims.
7. A pre-hearing conference was held by the King County Hearing Examiner’s Office in this appeal proceeding on December 7, 2015, with a Pre-hearing Order issued on December 9, 2015. Pre-hearing motions were also submitted and argued and limited pre-hearing discovery conducted. The appeal hearing was held on March 22nd and 23rd, 2016, at which time witness testimony was received and twenty-six exhibits identified for the record. Of these four, numbers 15, 18, 21 and 23, were not admitted, and three others have multiple parts. Exhibit no. 1, the DPER staff report, contains 12 attachments, Exhibit 24 has three parts, and Exhibit no. 25, evidence from the earlier parcel 9038 hearing stipulated for entry into this record, has 19 parts.

Site development issues

8. The most reliable evidence depicting site development on parcel 9005 as it existed in the 1958 time frame when County zoning regulations were first adopted are two aerial photographs dating from 1959 and 1960. They show an auto wrecking yard well established on approximately the southern two thirds of the parcel, with vehicles interspersed among a few remaining trees, and storage areas connected to one another via a haul road that exited to the public roadway at the site’s southeast corner. Also lying near the southeast corner were two buildings, one rectangular and the other trapezoidal. Measurements for these buildings appeared to have been recorded within the County Assessor’s parcel data for subsequent years. Based on sketches within the Assessor’s records, the total square footage for the structures combined would not have exceeded 3,000 square feet. These photographs also showed scattered around the site units much

larger than single passenger vehicles, which might have been truck trailer units used for parts storage.

9. The aerial photograph for the year 2000 represents parcel 9005 at a point in time not long before its purchase by Mr. McMilian from Richard Horan. In this photograph the small trapezoidal structure at the southeast tip of the parcel is gone and the rectangular structure adjacent to it has been enlarged to the north. The wrecking yard has been extended nearly to the external boundaries of the site in all directions. The main entry has been relocated to approximately the middle of the site's Enchanted Parkway frontage and the number of truck trailer units presumably used for storage has been greatly increased. While a reasonably distinct pattern of access routes existed throughout the site, the overall visual impact in 2000 was one of disorganization, especially in the site's northern half.
10. In the 2005 aerial photograph, representing conditions on the property approximately three years after Mr. McMilian's purchase of it, the cluttered appearance has been replaced by a neat grid of cars stored in rows connected by a more extensive internal haul route system now extended into the formerly wooded lot adjacent to the south, parcel 9038. The remaining building in the southeast corner appears to have been further enlarged northward and the number of truck trailer units greatly reduced. West of the enlarged original structure and just north of the mid-point of the boundary between the two parcels a feature appears that was likely a portable car crusher. The crusher later appears more distinctly in the same location in both the 2007 and 2013 aerial photographs.
11. The most striking difference between the 2007 and 2013 aerial photographs of the site was that the number of vehicles stored on the western half of the site had been greatly reduced. A second large structure also has been constructed adjacent to the original building on its west side. By 2013 the parking area within the northwest corner has been segregated into two distinct lots. The southerly of the two parking lots has the same color as the adjacent highway and thus appears to have been paved. The northerly parking lot may have been graveled in that its color appears darker than the unpaved areas to the west. Darker tones are also visible at the site entry and on the roadway immediately west of the building complex, suggesting that they too may have been graveled.
12. Code Enforcement Officer Erroll Garnett researched permitting activity on parcel 9005 dating back to 1974 and testified that since that date no County permits have been issued for the parcel. Mr. McMilian was forthcoming in admitting that he had not obtained any building permits for the large new shed structure west of the original building nor for the southerly paved parking area. Precise onsite dimensions were not submitted for this proceeding, but using a typical 16-foot car length as a rough scale, the paved parking lot appears to be approximately 10,000 square feet in area. A further new feature appearing in the 2013 aerial photograph was a compact section of 8 truck trailers likely used for parts storage.
13. Because he was only assigned to the case in December, 2015, after the retirement of Officer Al Tijerina, and has himself never observed the site from any location inside its perimeters, in his hearing testimony Mr. Garnett operated at a disadvantage and was forced to rely heavily on historical documents in assembling his analysis. Thus probably the most objectively reliable and complete description of onsite conditions was provided

in Exhibit no. 19, the stormwater pollution prevention plan performed for Astro Auto Wrecking in 2011 by the SNR Company. Due to its stormwater focus this study offers substantial detail regarding impervious surfaces on the site. The following quotations from the SNR report describe the presence and extent of impervious surfaces on the site:

The eastern area of the subject property includes the paved customer parking lot and gravel paved areas that can extend as far west as the fuel storage areas. Much of the eastern portions of the subject property had fill materials placed to create level parking, storage, and areas for equipment parking. The fill materials include recycled concrete, soil, gravels, and other similar materials. Fill materials have not apparently been placed in the western portion of the subject property....

The only permanent impervious surfaces on the subject property are the covered buildings and parking lot area in the eastern portion of the subject property. The vehicle storage yard is unpaved, and is predominantly native soil or native soil covered with quarry spalls to reduce ponding and erosion potential....

The subject property has approximately 20 percent coverage by impervious surfaces.

The 2011 stormwater study was conducted for the entire Astro Auto Wrecking operation as it then existed on both parcels 9005 and 9038, a total area of approximately 5.15 acres. Based on this total area, 20 percent coverage with impervious surfaces would generate a figure somewhere in the range of 40,000 square feet. Absent any indication in the record of the installation of impervious surfaces on parcel 9038, the 40,000 square foot impervious surface calculation would apply almost entirely to parcel 9005, particularly the eastern portion of the parcel adjacent to Enchanted Parkway.

14. Turning to the question of new onsite buildings specifically, again one must acknowledge that precise measurements cannot be reliably derived from this record. But the magnitude of change can be described in terms that are adequate for our review purposes. Even if one generously ascribes a 1958 baseline level of structural onsite development at 3,000 square feet of floor area, it is clear that the expansions that have occurred since 1958 equaled at least triple this figure. Based on the aerial photographs, Mr. Garnett roughly estimated the square footage of the new shed lying west of and adjacent to the original structure at 3,500 square feet. Employing a similar scale, the new extension directly north of the original building would cover approximately another 3,000 square feet. These figures, while not exact, can be calibrated against the size of passenger cars appearing in the same photographs. Since the County code only contemplates permitting a 10 percent increase in floor area without conditional use permit approval, a minimum 300 percent increase, even if approximate, exceeds the regulatory standard by a comfortably large quantity.
15. New uses on the property that are automotive-related but not obviously essential to the core auto wrecking operation are the used car sales, the offering of mechanical repair services and the sales of tires. The SNR stormwater report states, “Astro Auto Wrecking

also provides automotive repairs and tire services in the onsite auto repair and service garage (inside of the building).” There is no evidence in the record that operations on the site in 1958 included sales to the public of anything other than salvaged parts.

16. Used parts storage and sales, on the other hand, have always been an intrinsic part of the auto wrecking business, both generally and on parcel 9005, and are activities supported by public policies that favor recycling. Autos arrive at a wrecking yard in different states of disrepair – some being total wrecks, others having some parts that can be removed and reused, and a few sufficiently intact that they can be restored economically to operating condition and resold. Parts removed from vehicles for future resale need to be stored somewhere, both to keep them from rusting and to avoid releasing toxic fluids to the environment. Storage techniques appear to be largely opportunistic, ranging from placing parts on a pallet under blue poly tarps to storing them in portable units such as truck trailers or shipping containers, or on the high end warehousing them in permanent structures with at least a concrete floor pad underneath and a roof overhead. The Astro site seems to have had a long history of using large truck trailer units for storage.
17. The evolution of auto wrecking yards since 1958 appears to have been driven by three principal factors. One is an increasingly stringent regime of environmental regulation that has required initial drainage of fluids from vehicles upon arrival at the yard and their careful disposal. A second major factor driving change is the need to assure that vehicle ownership documents are in order before any vehicle is dismantled, crushed or otherwise disposed. This means segregating cars into a holding area until any missing documentation has been provided. Different licensing requirements also mandate segregating cars intended for resale from those slated for demolition. Finally, as the number of automobiles within circulation has virtually exploded while the number of facilities dealing with wrecked vehicles has remained constant or perhaps even decreased, the need for greater efficiency in the processing of vehicles has forced the development of improved industry technologies.
18. This brings us then to the question of the status of newer equipment on the Astro Auto Wrecking site and specifically to the legal status of its portable crusher. The 2011 stormwater plan contains the following equipment description:

Large equipment such as forklifts, two trucks, excavators and loaders are frequently used at the facility to move inventory throughout the yard. All equipment is maintained in the covered garage area of the facility. The onsite crushing equipment is equipped with a fluid recovery system that will collect any remaining fluids that may be present in the vehicle including rainwater. These fluids are passed through an oil water separator on the crusher with any oils being transferred to an onsite waste oil tank.
19. In 1958 onsite crushing occurred far less frequently than it does today, and there is no evidence that Mr. McMilian's predecessors engaged in such activity on parcel 9005. The cutting-edge technology at that earlier time consisted of excavating a pit in the ground, providing the pit with walls to contain expansion, hoisting a vehicle into the pit and crushing it with a heavy lid. The crushed vehicle was then lifted onto a flatbed truck and carted offsite. A single flatbed truckload typically accommodated two crushed vehicles.

The new hydraulic crushers used now are much more efficient. As many as six cars can be crushed sequentially into a single bundle and as many as four or five bundles loaded onto a semi trailer for trucking off the site. A single crusher can process a full semi truck load in about a half hour.

20. Furthermore, auto crusher units have become portable. They can be moved from site to site. Thus there are businesses that operate portable auto crushers for the service of smaller yards, perhaps being scheduled to come into a smaller facility on a monthly basis and crush all of the accumulated inventory then stored at the site. Once finished, the crusher moves onto another site.
21. Larger auto wrecking yards find it more economical to own their own crushers rather than contract for crusher services from a third party. At a certain level of business volume the cost of owning your own crusher per unit of inventory becomes significantly less than the cost of renting someone else's portable service. Mr. McMilian thus has opted to buy his own portable crusher, which he mostly uses at the Astro site but on occasion takes to other sites on a contract basis. It seems clear that onsite crushing is now the standard industry practice, whether one owns the crusher oneself or contracts with another crusher owner for portable services. The alternative to onsite crushing is to haul uncrushed vehicles to disposal sites, an operation that requires many more truck trips and thus imposes a higher level of cost.
22. There can be no doubt that having onsite crushing equipment increases the number of cars that any given auto wrecking site can process. Its relative speed means that more vehicles can be moved through the site within any given period of time. It may perhaps also be true that owning a crusher allows an operator to process more product than would be feasible if dependent on rental crushers being brought onto the site. This might be true because inventory would build up between visits of the rental equipment, and at some point the yard could run out of storage space and thus be temporarily unable to take in more vehicles.
23. A vehicle crusher is a piece of heavy equipment that makes noise. Plus the greater efficiency resulting from use of a vehicle crusher onsite means that more product can be moved through the facility than if no onsite crushing is done, resulting in more truck trips transporting wrecked vehicles in and out. But there is no evidence in the record that the noise from operating a vehicle crusher is more egregious than any other major equipment used at the facility, or that more truck trips have resulted in significantly increased adverse offsite impacts. The County submitted to the record no noise level studies either for Mr McMilian's portable crusher or any other standard crushing unit. Paul Skalicky, a neighbor who lives south of the Astro facility, testified at the 2009 hearing on parcel 9038 that after the trees were removed from the southerly parcel the auto wrecking yard noise from parcel 9005 became more noticeable and obtrusive. But Mr. Skalicky's focus was more on a tractor apparently used for moving vehicles around the yard than on the crusher itself. In his testimony he stated at one point that "they move them around with a very loud, uh, tractor. The tractor is louder than the crusher."

CONCLUSIONS:

1. The second citation within the most recent Notice and Order for unauthorized construction of accessory structures was essentially uncontested by the Appellants. Mr McMilian admitted that the large outbuilding located directly west of the primary building was constructed without permits, and Mr Garnett testified that no permits have been issued for the site dating back to 1974. This implies that likely most of the addition to the primary building was also constructed without permits. Based on the evidence, item no. 2 within the Notice and Order must be upheld.
2. KCC 21A.06.800 defines a “nonconformance” as a “use, improvement or structure established in conformance with” applicable laws in effect at the time of establishment, which use, improvement or structure now no longer conforms to such laws “due to changes to the rules and regulations or their application to the subject property.” KCC 21A.32.055 prohibits modifications to a nonconformance that either expands it or creates a new type of nonconformance. But KCC 21A.32.065 allows very limited expansions to occur to building square footage, impervious surface, parking, or building height if not exceeding a 10 percent increase and approved pursuant to the County’s code compliance process. Any greater dimensional expansion of a nonconformance requires a conditional use permit.
3. A considerable body of Washington case law is focused on the question of what constitutes the expansion of a nonconforming use that may be denied or conditionally approved by a municipality, versus the intensification of such a use that is permitted outright. The leading case informing this discussion is *Keller v. City of Bellingham*, 92 Wn. 2d 726 (1979), which was recently summarized as follows within *Kitsap County v. Kitsap Rifle and Revolver Club*, 184 Wn. App. 252 (2014):

Keller described the concept of “expansion” as an increase in the volume or intensity of the use of such magnitude that effects a “fundamental change” in the use, and the concept of “intensification” as where the “nature and character” of the use is unchanged and substantially the same facilities are used. [Citation omitted.] According to *Keller*, the test is whether the intensified use is “different in kind” than the nonconforming use. 184 Wn. App. at 272.
4. Based on the record presented at the public hearing, there are five principal activities at the Astro Auto Wrecking site as presently constituted that did not exist in 1958 when the nonconforming use was initially established. Depending on circumstances, all five arguably could be regarded as either expansions or intensifications; they include the used car sales, the automobile repair work, the tire sales, the onsite vehicle crusher, and the use of large truck trailers for parts storage. Since recycling what is usable seems to have long been an intrinsic part of the auto wrecking business concept, and the record shows that sales of salvaged parts was an element of the site's operation from the beginning, used car sales, auto repair work and tire sales can qualify as intensifications of the fundamental salvage and recycling project to the extent that they involve vehicles towed to the property that would otherwise be slated for demolition. In other words, cars towed to the site in the normal course of the legally established nonconforming business can be

repaired and made operable for sale, and tires can be stripped from wrecked vehicles and resold. But repair of vehicles brought in by the general public would not constitute an intensification of the wrecking business, nor would be the sales of either tires obtained from outside sources or cars bought at auction for the specific purpose of resale. Thus these new site activities can only be viewed as intensification of the auto wrecking use to the extent that they are directly connected to processing vehicles brought in pursuant to the auto wrecking operation. Conversely, if car and tire sales and auto repair are not conducted in direct support of the auto wrecking use, then they must be classified as new expansionary uses subject to separate review as to their allowability.

5. The onsite use of the portable crusher and the truck trailers engage more directly the legal distinction between expansion and intensification. Although the *Keller* “different in kind” definition seems somewhat elusive, what emerges from the case law as the determining factor between an expansion and an intensification is the element of new offsite impacts. A site alteration that does not greatly increase offsite impacts can be justified as an intensification because its effect on the surrounding community remains generally within the boundaries established by the original legal nonconforming use and therefore is consistent with historical expectations.
6. Approached from this perspective, the increased use on the Astro site of large truck trailers as storage units should be viewed as a permitted intensification. Parts salvage and resale were part of the original nonconforming use, and parts need to be housed somewhere. That somewhere could be a shed, a cargo container, a lean-to or a truck trailer. No enhanced offsite impacts necessarily inhere in the choice of one storage option over another. But obviously, if some truck trailers are permanently anchored to the site and no longer actually mobile, the County is allowed to determine that they have become permanent structures requiring the normal appropriate permits for their siting.
7. Mr. McMilian’s portable auto crusher is big, yellow, highly visible and obviously unlike any piece of equipment that existed on the site in 1958. DPER seems to have concluded that such an apparent quality of uniqueness in itself provided a sufficient basis to justify labeling the crusher as a regulated expansion rather than a permitted intensification. But the record shows that use of portable crushers has become a standard industry practice, and their offsite noise impacts seem to be no different from other large pieces of machinery on the site—indeed are arguably less impactful than some of the larger loaders DPER deems unobjectionable. The County has not made a case that locating the portable crusher at the Astro site as its home base imposes greater offsite impacts than the alternative of having a rented crusher come onsite periodically to do the work all at once. Mr. McMilian’s ownership of the crusher probably spreads the workload out more evenly over time and may allow him to process more vehicles overall because his stockpile never accumulates to the point of filling the yard to capacity. Further, while the more drastic alternative of requiring him to do all his crushing offsite might reduce the flow of vehicles into Astro Auto Wrecking, it would increase the truck traffic going out, which now would consist of less compact uncrushed vehicles. But more fundamentally, the County has merely speculated about these impacts and has made no credible and systematic attempt to quantify them. We conclude that, despite its highly visible presence, the record supports classification of the crusher as a permitted intensification of the established legal nonconforming use.

8. Conversely, the Notice and Order must be upheld and a conditional use permit process invoked based on the vast onsite increases over 1958 levels in both building square footage and areas of impervious surface. In 1958 the site featured a couple of small buildings at its southeast corner and otherwise was simply comprised of vehicles parked on bare soils, with vegetation retained along the western and northern perimeters. A reasonable estimation of total onsite impervious area in 1958 would be about 5,000 square feet, including the buildings and adjacent parking area. In 2011 Mr. McMilian's own stormwater planning consultant estimated the impervious surface area onsite adjacent to the Enchanted Parkway frontage to be approximately an acre. This would represent an 800 percent increase over 1958, whereas the code requirement for conditional use permit review is triggered by a 10 percent increase.
9. A similar outcome is dictated by the building square footage analysis as well. A generous estimation of the 1958 total building area would have been no more than 3,000 square feet, and the floor area of the two new buildings adjacent to the original structure is approximately three times that. A 300 percent increase in building square footage is documented by the aerial photographs, while only a 10 percent increase triggers the conditional use permit requirement.
10. In summary, as required by KCC 21A.32.055 and .065, the conditional use permit requirement of the Notice and Order must be upheld based on the large onsite expansions in building square footage and impervious surfaces over 1958 levels. On the other hand, because they are use intensifications and not expansions, the conditional use permit review may not prohibit the employment onsite of the portable crusher nor the continued usage of portable storage containers. The vehicle and tire sales businesses and the auto repair operation qualify as intensifications to the extent that they are devoted to the support of the auto wrecking use itself, not to serving unrelated public patrons or processing cars bought at auction or on the open market. But while intensifications may not be prohibited, their onsite implementation remains subject to normal construction, development and environmental rules. The Appellant argument that the County's application of general police power regulatory requirements adopted since 1958 is categorically precluded with respect to legal nonconforming uses established earlier at the site was definitively rejected by the Washington Supreme Court in *Rhod-A-Zalea and 35th, Inc. v. Snohomish County*, 136 Wn. 2d 1 (1989). Customary building, development, health and safety, and environmental requirements may be applied to legal nonconforming uses if done in a non-discriminatory and non-prejudicial manner.

DECISION:

The code enforcement appeal (File No. E0800728) of Leo and Sherry McMilian and Astro Auto Wrecking is DENIED in part and GRANTED in part. Building permits and related approvals are required for the accessory structures, including an addition to the primary building and construction of an adjacent outbuilding, as alleged in citation no. 2 of the Notice and Order. As alleged in citation no. 1, a conditional use permit must be obtained for the expansion of a nonconforming use based on unauthorized increases in building square footage and impervious surface areas. The appeal is granted with respect to the specific allegation within the Notice and Order that “expansion of the use includes but is not limited to the addition of vehicle crusher and

expansion of scope of operation” and for the other permitted intensification of uses described above.

ORDER:

The following conditions shall apply to procedures effecting compliance with this decision:

1. No penalties shall be assessed against the Appellants or their property if within 45 days of the date of this order a complete building permit application is submitted for the primary building addition and the adjacent new storage and shop building, and a conditional use permit application is submitted for expansion of a nonconforming use involving non-permitted increases in onsite building square footage and impervious surface areas and, if applicable, expansion of vehicle and tire sales and auto repair services beyond the scope supported by the legally established wrecking yard use. As an alternative to applying for a conditional use permit, before the 45 day deadline the Appellants may instead reduce site development to 1958 levels as follows: sales and repair operations shall be scaled back, if needed, to include only product generated by the wrecking yard operations, total onsite building square footage shall be reduced to 3000 square feet and total impervious surfaces coverage shall not exceed 5000 square feet; provided that, DPER may authorize a 10% increase in building and impervious surface coverages pursuant to its code compliance process.

If such deadline is not met, penalties may be assessed retroactive to the date of this order. DPER, in its discretion, may extend the deadline stated herein.

2. A determination that an onsite activity constitutes part of a legal nonconforming use shall not exempt the property owner from having to comply with nondiscriminatory normal construction, development, environmental, and health and safety regulations pertaining thereto.
3. Within any future County review pertaining to this site, intensified legal nonconforming uses deemed established hereunder shall include a portable auto crusher, portable containers for storage of vehicle parts, and used car and tire sales and auto repair operations to the extent that such operations entail processing vehicles or parts obtained from the site’s normal intake of towed vehicles. The intensified legal nonconforming use does not include sales of vehicles, parts or tires obtained from third parties outside the scope of the towing and wrecking operations nor to the repair of vehicles derived from sources other than such legal operations.

ORDERED April 1, 2016.



Stafford Smith
King County Hearing Examiner pro tem

NOTICE OF RIGHT TO APPEAL

Pursuant to King County Code Chapter 20.24, the King County Council has directed that the Examiner make the final decision on behalf of the county regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in superior court within 21 days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE MARCH 22, 2016, HEARING IN THE APPEAL OF LEO MCMILIAN,
DEPARTMENT OF PERMITTING AND ENVIRONMENTAL REVIEW FILE NO. E0800728
SUPPLEMENT.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were
Cristy Craig, Jean Jorgensen, Leo McMilian, and Cynthia Hickey:

The following exhibits were offered and entered into the record:

- | | |
|----------------|--|
| Exhibit no. 1 | Department of Permitting and Environmental Review staff report to the
Hearing Examiner for file no. E0800728 Supplement |
| | A. Second Supplemental Notice and Order, issued July 21, 2015 |
| | B. Notice and Statement of Appeal, dated August 4, 2015 |
| | C. Notice and Order, issued August 5, 2008 |
| | D. Supplemental Notice and Order, issued July 21, 2011 |
| | E. Notice and Statement of Appeal, dated July 22, 2011 |
| | F. Notice and Statement of Appeal, dated August 8, 2008 |
| | G. Letter from DPER to Appellant McMilian, dated June 30, 2008 |
| | H. Photographs of subject property |
| | I. Photographs of subject property |
| | J. Photographs of subject property taken by Erroll Garnett on March 1,
2016 |
| | K. iMap aerial photograph of subject property taken in 2013 |
| | L. Pictometry photographs of subject property taken in 2015 |
| Exhibit no. 2 | Washington State Department of Natural Resources (DNR) photograph, dated
July 16, 1959 |
| Exhibit no. 3 | DNR photograph, dated August 6, 1955 |
| Exhibit no. 4 | DNR photograph, dated June 30, 1965 |
| Exhibit no. 5 | DNR photograph certification |
| Exhibit no. 6 | Terra Server photographs, dated 1957 |
| Exhibit no. 7 | Terra Server photographs, dated 1968 |
| Exhibit no. 8 | Terra Server invoice |
| Exhibit no. 9 | King County Department of Assessments (Assessor) parcel records for parcel
3321049005, as accessed February 3, 2016 |
| Exhibit no. 10 | Assessor records for parcel 3221049038 |
| Exhibit no. 11 | Assessor records parcel 3321049005 |
| Exhibit no. 12 | BALD grading permit file no. 3185-60 record: field check, plotting and
screening report |
| Exhibit no. 13 | BALD grading permit file no. 3185-60: application review, dated October 5,
1989 |
| Exhibit no. 14 | King County iMap aerial photographs |
| Exhibit no. 15 | <i>Withdrawn</i> |
| Exhibit no. 16 | Letter from DPER to Appellant McMilian, dated October 12, 2000 |
| Exhibit no. 17 | Photographs of subject property, taken October 22, 2003 |
| Exhibit no. 18 | <i>Withdrawn</i> |
| Exhibit no. 19 | Astro Auto Wrecking stormwater pollution prevention plan, dated April 2011 |
| Exhibit no. 20 | Journal of proceedings of County Commissioners, dated August 12, 1958 |
| Exhibit no. 21 | <i>Not offered</i> |

- Exhibit no. 22 Photographs of subject property taken by Leo McMilian
Exhibit no. 23 *Withdrawn*
Exhibit no. 24 Screen shots from website
 A. Big Mac auto crushers
 B. Big Mac flattener
 C. Big Mac flattener

MINUTES OF THE MARCH 23, 2016, HEARING IN THE APPEAL OF LEO MCMILIAN,
DEPARTMENT OF PERMITTING AND ENVIRONMENTAL REVIEW FILE NO. E0800728
SUPPLEMENT.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were
Cristy Craig, Jean Jorgensen, Erroll Garnett and Leo McMilian.

The following exhibits were offered and entered into the record:

- Exhibit no. 25 Selected items of evidence from Hearing Examiner hearing appeal record for
 file no. E05G0103
1. Notice and Order E05G0103
 2. Aerial photo of subject property and surrounding area taken May 18,
 1970, exhibit no. 5B
 3. Aerial photo of subject property and surrounding area taken 2000,
 exhibit no. 5D
 4. Aerial photo of subject property and surrounding area taken 1996,
 exhibit no. 5C
 5. Aerial photo of subject property and surrounding area taken 2002,
 exhibit no. 5E
 6. Aerial photo of subject property and surrounding area taken 2005,
 exhibit no. 5F
 7. Aerial photo of subject property and surrounding area taken 2007,
 exhibit no. 5G
 8. Photograph of subject property looking north area from area where
 subject clearing and grading took place, taken by Al Tijerina on June
 9, 2005, exhibit no. 5M
 9. Drawing of subject property post clearing and grading on April 8,
 2005, drawn by DDES Site Development Specialist Robert Manns,
 exhibit no. 6
 10. Letter to Bruce S. MacVeigh, Appellant's engineer, from Randy
 Sandin of DDES regarding clearing and grading permit application,
 dated January 26, 2007, exhibit no. 20
 11. Archived tax records for the parcel 3321049038 (entered into the
 record on August 21, 2008), exhibit no. 11
 12. Affidavit of Helene Mecklenburg, signed November 9, 1978, exhibit
 17a
 13. Aerial photograph of subject property taken June 23, 1960, exhibit 21
 14. Aero-Metric certification for photograph negative number KC-60, 20-
 59 dated June 23, 1960
 15. Richard Horan deposition transcript

16. Leo McMilan deposition transcript
 17. Paul Skalicky deposition transcript
 18. Mark Heintz deposition transcript
 19. Randy Sandin deposition transcript
- Exhibit no. 26 Appellant first interrogatories and request for production to respondent and responses

SLS/vsm

April 1, 2016

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
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hearingexaminer@kingcounty.gov

CERTIFICATE OF SERVICE

SUBJECT: Department of Permitting and Environmental Review File No. **E0800728**
Supplement

**LEO MCMILIAN
SHERRY MCMILIAN
ASTRO AUTO WRECKING**
Code Enforcement Appeal

I, Vonetta Mangaoang, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND DECISION** to those listed on the attached page as follows:

- ☒ EMAILED to all County staff listed as parties of record/interested persons and primary parties with e-mail addresses on record.
- ☒ caused to be placed with the United States Postal Service, with sufficient postage, as **FIRST CLASS MAIL** in an envelope addressed to the non-County employee parties of record/interested persons at the addresses indicated on the list attached to the original Certificate of Service.
- ☒ caused to be placed via County INTEROFFICE MAIL to County staff on the list attached to the original Certificate of Service.

DATED April 1, 2016.



Vonetta S. Mangaoang
Clerk/Manager

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